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UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Mitchell Ferguson;

Plaintiff,

vs.

K-M Drilling, Inc.; Kenneth E. Myers and
Elizabeth Myers, husband and wife

Defendant.

Case No.: _____

COMPLAINT

JURY DEMAND

Plaintiff Mitchell Ferguson, by and through John L. Collins, Trey Dayes, and
Dawn M. Sauer, of and for the PHILLIPS DAYES LAW GROUP PC, for his Complaint
against Defendants K-M Drilling, Inc., Kenneth Myers and Elizabeth Myers, avers as
follows:

NATURE OF THE CASE

1
2 1. The Fair Labor Standards Act is designed to eliminate “labor conditions
3 detrimental to the maintenance of the minimum standard of living necessary for health,
4 efficiency and general well-being of workers.” 29 U.S.C. § 202(a). To achieve its goals,
5 the FLSA sets minimum wage and overtime pay requirements for covered employers. *See*
6 29 U.S.C. §§ 206(a), 207(a).

7
8 2. Employers must compensate employees for all work that employers permit
9 employees to perform. *See* 29 C.F.R. § 785.11. In such cases, it is the responsibility of
10 employers’ management to ensure that work is not performed if management does not
11 desire for such work to be performed. *See* 29 C.F.R. § 785.13. Employers may not accept
12 the benefits of employees performing work without compensating the employees for their
13 work. *Id.*

14 3. Plaintiff brings this action against Defendant for unlawful failure to pay
15 overtime wages in direct violation of the Fair Labor Standards Act, 29 U.S.C. § 201 *et*
16 *seq.* (“FLSA”).

17
18 4. For at least four years prior to the filing of this action, Defendant had a
19 consistent policy and practice of requiring its employees to work well in excess of forty
20 (40) hours per week without paying them time and a half for hours worked over forty
21 (40) hours per week.

22 5. For at least four years prior to the filing of this action, Plaintiff often worked
23 at least thirty hours in excess of forty (40) hours per week and was not paid time and one-
24 half.
25

1 6. Plaintiff seeks to recover unpaid overtime compensation and an equal amount
2 of liquidated damages, including interest thereon, statutory penalties, attorneys' fees, and
3 costs pursuant to 29 U.S.C. § 216(b).

4 **JURISDICTION AND VENUE**

5 7. This Court has jurisdiction over the subject matter and the parties hereto
6 pursuant to 29 U.S.C. § 216(b), and 28 U.S.C. § 1331.

7 8. Venue is proper under 28 U.S.C. § 1391(b) because a substantial part of the
8 events or omissions giving rise to this claim occurred in this District.
9

10 **PARTIES**

11 9. At all times material hereto, Plaintiff Mitchell Ferguson was and continues to
12 be a resident of the State of Arizona.

13 10. On information and belief, at all times material hereto, Defendant K-M
14 Drilling, Inc., was and continues to be an entity organized under the law of the State of
15 Arizona, with its principal place of business in Yavapai County, Arizona, and is subject
16 to the jurisdiction of this Court.

17 11. Upon information and belief, Defendants Kenneth and Elizabeth Myers are
18 the owners of K-M Drilling and make all decisions on behalf of the corporation.
19

20 12. Upon information and belief, Defendants Myers were and are residents of the
21 State of Arizona.

22 13. Defendants Kenneth and Elizabeth Myers have caused events to take place
23 giving rise to this Complaint as to which their marital community is fully liable.
24
25

1 32. Defendant has intentionally failed and refused to pay Plaintiff overtime
2 according to the provisions of the FLSA.

3 33. On information and belief, Defendant further engaged in a widespread
4 pattern and practice of violating the provisions of the FLSA by failing to pay Plaintiff in
5 accordance with 29 U.S.C. § 207.

6 34. As the direct and proximate result of Defendant's violations of the FLSA,
7 Plaintiff has suffered damages by failing to receive compensation in accordance with 29
8 U.S.C. § 207.

9 35. Pursuant to 29 U.S.C. § 216, Defendant is liable to Plaintiff for an amount
10 equal to one and one-half times his regular pay rate for each hour of overtime worked per
11 week.
12

13 36. In addition to the amount of unpaid wages owed to Plaintiff, he is also
14 entitled to recover an additional equal amount as liquidated damages pursuant to 29
15 U.S.C. § 216(b).

16 37. On information and belief, Defendant's conduct in failing to properly
17 compensate Plaintiff, in violation of the FLSA, was willful.

18 38. Defendant has not made a good faith effort to comply with the FLSA.
19 Plaintiff has been required to bring this action to recover his federal overtime wages
20 remaining due and unpaid, and his statutory liquidated damages, and as the direct and
21 foreseeable result of Defendant's conduct, Plaintiff has incurred costs and attorneys' fees.

22 WHEREFORE, Plaintiff respectfully requests that judgment be entered in his
23 favor against Defendant:
24
25

- a. Awarding Plaintiff overtime compensation in the amount due for all of their time worked in excess of forty (40) hours per week at a pay rate equal to one and one-half times Plaintiff's regular rates of pay while at work for Defendant, in an amount proved at trial;
- b. Awarding Plaintiff liquidated damages in an amount equal to the overtime award;
- c. Awarding Plaintiff reasonable attorneys' fees, costs, and expenses of the litigation pursuant to 29 U.S.C. § 216(b);
- d. Awarding Plaintiff pre-judgment interest, at the highest legal rate, on all amounts awarded under subsections (a) and (b) above from the date of the payment due for that pay period until paid in full;
- e. Awarding Plaintiff post-judgment interest, at the highest legal rate, on all awards from the date of such award until paid in full; and
- f. For such other and further relief as the Court deems just and proper.

COUNT TWO
DECLARATORY JUDGMENT

39. Plaintiff incorporates and adopts paragraphs 1 through 38 above as if fully set forth herein.

40. Plaintiff and Defendant have a dispute pending relating to the overtime provisions of the FLSA.

41. The Court has jurisdiction to hear Plaintiff's request for declaratory relief pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201–02.

1 42. Plaintiff is entitled to declarations, and requests that the Court make
2 declarations as to the following matters and as to other matters deemed appropriate by the
3 Court:

- 4 a. Defendant employed Plaintiff.
- 5 b. Defendant is engaged in an enterprise covered by the overtime and wage
6 provisions of the FLSA.
- 7 c. Plaintiff individually is covered by the overtime and wage provisions of the
8 FLSA.
- 9 d. Plaintiff worked in excess of forty hours per week at Defendant's request.
- 10 e. Defendant failed and refused to pay Plaintiff at a rate of one and one-half
11 times Plaintiff's regular rate of pay for each hour worked in excess of forty
12 hours per week.
- 13 f. Plaintiff is entitled to payment of his overtime wages and an equal amount
14 as liquidated damages.
- 15 g. Plaintiff is entitled to recover his reasonable costs and attorneys' fees
16 incurred herein.
- 17
- 18

19 43. It is in the public interest to have these declarations of rights recorded as
20 Plaintiff's declaratory judgment action serves the useful purposes of clarifying and
21 settling the legal relations at issue, preventing future harm, and promoting the remedial
22 purposes of the FLSA.

23 44. The declaratory judgment action further terminates and affords relief from
24 uncertainty, insecurity, and controversy giving rise to the proceeding.

25

1 WHEREFORE, Plaintiff respectfully requests that judgment be entered in his
2 favor against Defendants:

- 3 a. Declaring, pursuant to the Declaratory Judgments Act, that the acts and
4 practices complained of herein are in violation of the overtime and wage
5 provisions of the FLSA;
6
7 b. Awarding Plaintiffs their reasonable attorney's fees and the costs and
8 expenses of the litigation pursuant to 29 U.S.C. § 216(b); and
9
c. For such other and further relief as the Court deems just and proper.

10 **DEMAND FOR JURY TRIAL**

11 Plaintiffs and all similarly situated employees hereby request that, upon trial of
12 this action, all issues be submitted to and determined by a jury except those issues
13 expressly reserved by law for determination by the Court.

14 Dated: October 16, 2013

15 Respectfully submitted,

16 **PHILLIPS DAYES LAW GROUP PC**

17 By: /s/ John L. Collins

18 John L. Collins

19 Arizona Bar No. 030351

20 johnc@phillipsdayeslaw.com

21 Attorney for Plaintiffs
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